

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

MICHAEL CARGILL, *et al.*,

Plaintiffs,

v.

BUREAU OF ALCOHOL, TOBACCO,
FIREARMS AND EXPLOSIVES, *et al.*,

Defendants.

Case No. 1:22-cv-01063-DAE

DEFENDANTS' NOTICE OF AUTHORITY

Defendants hereby notify the Court and Plaintiffs that Defendant Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) has voluntarily made public a partially redacted version of the internal enforcement order referenced throughout the parties’ motion to dismiss briefing, ATF-O-5370.1F. In the interest of transparency, ATF provides an authentic and current version of that document here, attached as Exhibit A.

It was procedurally improper for the Magistrate Judge to rely on an unauthenticated and outdated version of the enforcement order in issuing the Report and Recommendation (“R&R”) on Defendants’ Motion to Dismiss, particularly when Plaintiffs’ Complaint hardly references that document. Putting that aside, however, Defendants submit that, should the Court need to consider the text of the order to resolve Defendants’ pending motion, it may take judicial notice of the enforcement order attached. As set forth in Defendants’ objections to the R&R, and as apparent on the face of the enforcement order, Defendants simply have not adopted the policy that Plaintiffs challenge, as they have not written the willfulness requirement out of the Gun Control Act. *See* Defs.’ Objs. to R&R at 11–12, 19, ECF No. 33.

Additionally, ATF considers the redacted portions of the document privileged and law

enforcement sensitive. Importantly, none of the redactions relate to the allegations of Plaintiffs' Complaint. The redacted information was compiled for law enforcement purposes and, if released, could compromise the integrity of ongoing and future ATF inspections and investigations. In particular, the redacted portions pertain to internal considerations for ATF personnel involved in the inspection and enforcement processes, the disclosure of which could enable licensees to circumvent applicable laws and regulations, which in turn, would undermine public safety. For instance, certain redactions indicate instances in which administrative settlement is inappropriate, while others identify circumstances in which initial license applications should be denied. Disclosure of such details could enable applicants or licensees to learn what types of information ATF prioritizes during its examinations as well as what types of information, when found, lead to specific outcomes. This would create a risk that applicants and licensees could attempt to hide problematic violations, and it would reduce deterrence as to other, non-referenced violations.¹

Dated: September 1, 2023

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

BRIGHAM J. BOWEN
Assistant Branch Director

/s/ Taylor Pitz
Taylor Pitz (CA Bar No. 332080)
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, N.W.

¹ Defendants recognize that Plaintiffs' response to Defendants' objections to the R&R was due today, September 1, 2023. *See* ECF No. 34; August 14, 2023 Text Order. Defendants notified Plaintiffs that they would be filing this notice with the Court, provided Plaintiffs with a copy of the redacted enforcement order, and indicated to Plaintiffs that they would not oppose a request for a reasonable extension of time to file their response brief before Plaintiffs filed their Response to Defendants' Objections to Report and Recommendation of United States Magistrate Judge, ECF No. 35.

Washington, DC 20005

Phone: (202) 305-5200

Email: taylor.n.pitz@usdoj.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Chance D. Weldon
Texas Public Policy Foundation
901 Congress Avenue
Austin, TX 78701

Nicholas R. Barry
America First Legal Foundation
611 Pennsylvania Ave SE #231
Washington, DC 20003

Robert E. Henneke
Texas Public Policy Foundation
901 Congress Avenue
Austin, TX 78701

Nate Curtisi
Texas Public Policy Foundation
901 Congress Avenue
Austin, TX 78701

Matthew Robert Miller
Texas Public Policy Foundation
901 Congress Avenue
Austin, TX 78701

/s/ Taylor Pittz
TAYLOR PITZ
Trial Attorney
U.S. Department of Justice